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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

KERN COUNTY DETENTION OFFICER'S ASSOCIATION, Plaintiff and Appellant, v. COUNTY OF KERN et al., Defendants and Respondents.	F075449 (Super. Ct. No. BCV-16-100201) **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Eric Bradshaw, Judge.

Mastagni Holstedt, Jeffrey R. A. Edwards and Carl C. Larson for Plaintiff and Appellant.

Liebert Cassidy Whitmore, Erich W. Shiners and Che I. Johnson for Defendants and Respondents.

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Appellant Kern County Detention Officer's Association (Association) is an employee organization representing sheriff's detentions deputies. These deputies are peace officers under Penal Code section 830.1, subdivision (c), whose enumerated responsibilities include securing county custodial facilities and monitoring inmates. In a petition for writ of mandate filed February 1, 2016, Association alleged respondents County of Kern, the Kern County Board of Supervisors, the Kern County Sheriff's Office, and Kern County Sheriff Donny Youngblood (collectively, County) unilaterally "changed terms and working conditions . . . by assigning mandatory overtime to [detentions deputies] in positions outside the bargaining unit," in violation of the Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.).[1, 2] Association asked the superior court to issue a writ compelling County to cease and desist from "assigning [deputies] mandatory and/or any assignments in . . . a classification outside of [the] bargaining unit" and "refusing to meet and confer in good faith."[3] Following a hearing, the court entered a judgment on January 31, 2017, denying the petition. It found the evidence "shows that the negotiated terms and conditions of [detentions deputies'] employment regarding mandatory overtime have not changed" and "does not show [County] failed to meet and confer in good faith."

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1 Unless otherwise indicated, subsequent statutory citations refer to the Government Code.

2 "[A] writ of mandate lies for an employee association to challenge a public employer's breach of its duty under the MMBA." (*Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 541.)

3 In general, the California Public Employment Relations Board (PERB) wields exclusive jurisdiction over alleged MMBA violations. (See § 3509, added by Stats. 2000, ch. 901, § 8; *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1077 (*Coachella Valley*).) Labor disputes involving peace officers, however, are not subject to PERB's jurisdiction. (§ 3511, added by Stats. 200, ch. 901, § 10; *Coachella Valley, supra,* at p. 1077, fn. 1; *El Dorado County Deputy Sheriff's Assn. v. County of El Dorado* (2016) 244 Cal.App.4th 950, 953, fn. 1.)

On appeal, Association reiterates County made an unlawful unilateral change. We disagree and affirm the superior court's judgment.

BACKGROUND

I. Overtime policy.

In 2013, Association and County agreed to implement the "**GUIDELINES FOR ROTATIONAL OVERTIME**" (Overtime Guidelines), which added detentions deputies to the rotational overtime pool. Pursuant to the Overtime Guidelines dated December 17, 2013, a deputy whose name appears at the top of the rotational overtime list is scheduled for a 16-hour double shift, i.e., eight regular working hours immediately preceded or followed by eight mandatory overtime hours. After completing the overtime shift, the deputy's name is moved to the bottom of the list so long as the work performed is eligible for this "credit." Qualifying shift work includes a " 'Jail Security Shift' . . . within the Lerdo Facilities in which a deputy supervises inmates . . . or is assigned to a fixed post in a security setting." A deputy who voluntarily completes credit-eligible overtime shift work on regular days off also receives the credit. According to the Overtime Guidelines, "[e]very effort shall be made to allow staff to volunteer for posted shifts prior to making necessary [overtime] assignments."

II. Jail security shift work at issue.

Prior to July 1, 2014, at County's Lerdo custodial complex, only detentions deputies could staff the Maximum-Medium (Max-Med) Duty Office, the Male Minimum Duty Office, and Pre-Trial Receiving Control.

The Max-Med Duty Office, a "fixed post," is "the central hub of the Max-Med facility" and "consists of the master controls for the facility, facility keys, cameras and visiting center." Four assigned "Duty Officer[s]" are "responsible for maintaining the facility inmate body count," "[r]eceiving new arrivals and transferred inmates," and "releas[ing] or transfer[ring] [inmates] to another facility," inter alia. (Boldface omitted.)

The Male Minimum Duty Office is "the center of the Male Minimum facility." Four assigned "Male Minimum Duty Office Deput[ies]" "maintain[] an accurate facility count," "keep[] track of all incoming male inmates and released inmates," "call[] inmates for professional visits," "prepare[] releases," "interact[] with inmates during open yard time," and "maintain[] a visual observation of the Male Minimum yard," inter alia.

Four "Receiving Control Deput[ies]" assigned to Pre-Trial Receiving Control "[are] responsible for preserving the security of the facility by limiting access to the loading docks and bus ramps of both Pre[-]Trial and [Max-Med] Facilities through a series of gates and sally ports." Essential duties include "[m]onitor[ing] the security of all areas covered by the video screens in Receiving Control" and "advis[ing] the Search & Escort 1 Deputy when inmates are placed in court holding cells."

In early 2014, as a cost-saving measure, County "proposed utilizing Sheriff's Aides[4] to perform tasks that were currently being performed by Detention[s] Deputies," namely "the duties associated with manning the Max-Med Office, the [Male] Minimum Duty Office, [and] Pre-Trial Receiving Control." In June 2014, Association and County agreed to replace 12 vacant detentions deputy positions with 12 sheriff's aide positions. Thereafter, sheriff's aides staffed the Max-Med Duty Office, the Male Minimum Duty Office, and Pre-Trial Receiving Control. Although detentions deputies could no longer "bid for a shift . . . as a regular assignment," they were "assigned to work overtime . . . when there [wa]s a personnel shortage of Sheriff's Aides" and "continued to volunteer for overtime."

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4 A sheriff's aide "is distinguished from other classifications by its responsibility for performing specialized non-sworn support activities within the Sheriff's Department dependent upon assignment." A separate employee organization represents sheriff's aides.

III. Overtime policy revision.

On or about December 16, 2014, Association and County entered into a "**SIDE LETTER AGREEMENT TO THE 2012-2015 MEMORANDUM OF UNDERSTANDING**." The parties agreed to "change from the current [regular] 8-hour shift schedule to a . . . 12-hour shift schedule" and modify the "previously met and conferred [Overtime Guidelines] . . . to reflect and accommodate the 12-hour shift schedule." The revised Overtime Guidelines dated March 9, 2015, specify "Detentions Deputies working a 12[-]hour shift schedule within the Lerdo facilities will be included in the rotational [overtime] pool." A deputy whose name appears at the top of the rotational overtime list is scheduled for a 12-hour overtime shift on regular days off and receives credit upon satisfying certain criteria, including whether the work performed is credit eligible. Qualifying shift work still includes a " 'Jail security shift' . . . within the Lerdo facilities in which a deputy supervises inmates . . . or is assigned to a fixed post in a security setting" and the revised Overtime Guidelines still prioritize deputies who volunteer to complete credit-eligible overtime shift work on regular days off. However, the following provision was inserted: "[T]he Lerdo Facilities Commander reserves the right to assign all deputies overtime shifts if the need arises."

IV. Association's request to meet and confer.

In a letter dated October 20, 2015, Association's counsel asked County to meet and confer regarding "the mandatory overtime assignments of Detentions Deputies to civilian Sheriff's Aide positions." In an e-mail dated November 25, 2015, County's employee relations officer denied the request, citing the "mutually negotiated . . . policy for mandatory overtime," inter alia.

DISCUSSION

I. Standard of review.

"When an appellate court reviews a trial court's judgment on a petition for a traditional writ of mandate, it applies the substantial evidence test to the trial court's

findings of fact and independently reviews the trial court's conclusions on questions of law, which includes the interpretation of a statute and its application to undisputed facts." (*California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432, 1443; see *ibid*. ["The substantial evidence test applies to both express and implied findings of fact."].)

"Substantial evidence is evidence of ponderable legal significance, reasonable in nature, and of solid value." (*George v. California Unemployment Ins. Appeals Bd.* (2009) 179 Cal.App.4th 1475, 1489.) "In reviewing the record for substantial evidence, we are required to review the entire record in the light most favorable to the judgment." (*Ibid*.) We "must resolve all explicit conflicts in the evidence in favor of the respondent and presume in favor of the judgment all reasonable inferences." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633, italics & fn. omitted.) "The ultimate determination is whether a reasonable trier of fact could have found for the respondent based on the whole record." (*Id.* at p. 1633, italics omitted.)

II. Analysis.

The MMBA "governs collective bargaining and employer-employee relations for most California local public entities, including cities, counties, and special districts." (*Coachella Valley, supra*, 35 Cal.4th at p. 1077.) "The MMBA's purpose is to provide a reasonable method of resolving disputes between public employers and public employee organizations regarding wages, hours, and other terms and conditions of employment." (*City of Los Angeles v. Superior Court* (2013) 56 Cal.4th 1086, 1092, citing § 3500, subd. (a).) "The centerpiece of the MMBA is section 3505, which requires the governing body of a local public agency, or its designated representative, to 'meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations.' " (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 780, italics omitted.) "The duty to meet and confer in good faith has been construed as a duty to bargain with the

objective of reaching binding agreements between agencies and employee organizations over the relevant terms and conditions of employment." (*Santa Clara County Counsel Attys. Assn. v. Woodside*, *supra*, 7 Cal.4th at p. 537.) "The duty to bargain requires the public agency to refrain from making unilateral changes in employees' wages and working conditions until the employer and employee association have bargained to impasse . . . ." (*Ibid.*)

"The rule in California is well settled: a [public entity]'s unilateral change in a matter within the scope of representation is a per se violation of the duty to meet and confer in good faith." (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 823.) "[A] unilateral change to negotiable subjects is regarded as a species of per se violations of the bargaining obligation because of its incompatibility with the bi-lateral scheme for collective bargaining and its inherently destabilizing and detrimental effect on the bargaining relationship, irrespective of intent." (*City of Montebello* (2016) PERB Dec. No. 2491-M, p. 10 [2016 Cal. PERB LEXIS 23, *13-*14] italics omitted.)[5]

"The gravamen of any unilateral action is exclusion of employees through their chosen representative from participation in the decision-making process. Whether a unilateral action is the creation, implementation or enforcement of policy, or a change to existing policy as contained in a written agreement, in written employer rules or regulations, or in an unwritten established past practice, . . . an employer contemplating a change in policy concerning a matter within the scope of representation [must] provide the exclusive representative notice and an opportunity to bargain." (*Salinas Valley Memorial Healthcare System* (2017) PERB Dec. No. 2524-M, p. 17 [2017 Cal. PERB LEXIS 7, *27].) "To state a prima facie case for an unlawful unilateral change, it must

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[5] Although the instant case is not within PERB's jurisdiction (see *ante*, fn. 3), we may nonetheless consider PERB decisions and rationale to the extent they are persuasive (*El Dorado County Deputy Sheriff's Assn. v. County of El Dorado*, *supra*, 244 Cal.App.4th at p. 957, fn. 4).

be established that: (1) the employer took action to change policy; (2) the change in policy concerns a matter within the scope of representation; (3) the action was taken without giving the exclusive representative notice or opportunity to bargain over the change; and (4) the action had a generalized effect or continuing impact on terms and conditions of employment." (*Ibid*. [2017 Cal. PERB LEXIS 7, *26-*27].)

The record—viewed in the light most favorable to the judgment—demonstrates the parties agreed to implement the Overtime Guidelines in 2013. Under the Overtime Guidelines, a detentions deputy who voluntarily or involuntarily completes certain overtime shift work, e.g., a " 'Jail Security Shift' . . . within the Lerdo Facilities in which a deputy supervises inmates . . . or is assigned to a fixed post in a security setting," receives an overtime credit. Work performed at the Lerdo complex's Max-Med Duty Office, Male Minimum Duty Office, or Pre-Trial Receiving Control—all of which are fixed posts—involves inmate supervision, inter alia, and thus qualifies for this credit. In mid-2014, the parties agreed to replace 12 vacant detentions deputy positions with 12 sheriff's aide positions for the express purpose of having sheriff's aides assigned to regular shifts at the Max-Med Duty Office, Male Minimum Duty Office, and Pre-Trial Receiving Control. However, nothing intimates the parties also agreed to modify the Overtime Guidelines to proscribe County from assigning deputies to mandatory overtime shifts at the aforementioned sites. In December 2014, the parties agreed to amend the Overtime Guidelines to incorporate deputies' new regular 12-hour work shift. The revised Overtime Guidelines reflect this change but does not otherwise indicate County can no longer schedule overtime " 'Jail security shift[s]' " at the Max-Med Duty Office, Male Minimum Duty Office, or Pre-Trial Receiving Control. Pertinent provisions on the matter have remained essentially intact since 2013.[6] Assignment of mandatory overtime

[6] Any insinuation the revised Overtime Guidelines somehow limited County's ability to assign mandatory overtime is rebutted by the new provision affording "the

is consistent with the agreed-upon policy and does not constitute a change in policy. (Cf. *County of Fresno* (2010) PERB Dec. No. 2125-M [2010 Cal. PERB LEXIS 44] [furlough policy].)

We conclude substantial evidence supports the court's finding "that the negotiated terms and conditions of [detentions deputies'] employment regarding mandatory overtime have not changed." Therefore, Association cannot establish a prima facie case for an unlawful unilateral action.[7]

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondents County of Kern, the Kern County Board of Supervisors, the Kern County Sheriff's Office, and Kern County Sheriff Donny Youngblood.

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DETJEN, J.

WE CONCUR:

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POOCHIGIAN, Acting P.J.

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PEÑA, J.

Lerdo Facilities Commander . . . the right to assign all deputies overtime shifts if the need arises."

[7] In view of our disposition, we need not address the parties' arguments regarding the defense of waiver. (See *County of Fresno, supra*, PERB Dec. No. 2125-M at p. 4, fn. 4 [2010 Cal. PERB LEXIS 44, *5, fn. 4].)